

1 KEVIN V. RYAN (CSBN 118321)
United States Attorney

2 EUMI L. CHOI (WVSBN 0722)
3 Chief, Criminal Division

4 JAMES E. KELLER (NYSBN 2893881)
Assistant United States Attorney
5 1301 Clay Street, Suite 340S
Oakland, CA, 94612
6 Telephone: (510) 637-3924
Facsimile: (510) 637-3724
7 Attorneys for Plaintiff

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION

11 UNITED STATES OF AMERICA,)	No. CR-04-40144 MJJ
12 Plaintiff,)	
13 v.)	PLEA AGREEMENT
14 JOHN MARK FELDER,)	
15 Defendant.)	Oakland Venue
16)	

17 I, John Mark Felder (the "defendant"), and the United States Attorney's Office for the
18 Northern District of California (the "government") enter into this written plea agreement (the
19 "Agreement") pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure:

20 The Defendant's Promises

21 1. I agree to plead guilty to counts Two through Five of the captioned indictment, each
22 of which charge me with a separate incident of bank robbery, each in violation of 18 U.S.C. §
23 2113(a). I agree that the elements of the offense and the maximum penalties for each of the four
24 counts are as follows: (1) I took money belonging to a bank; (2) I used force, violence, or
25 intimidation in doing so; and (3) on that date the deposits of the bank were insured by the Federal
26 Deposit Insurance Corporation.

27 a.	Maximum prison sentence	20 years
28 b.	Maximum fine	\$250,000

PLEA AGREEMENT
CR-04-40144 MJJ

- | | | |
|----|---------------------------------|----------|
| c. | Maximum supervised release term | 3 years |
| d. | Mandatory special assessment | \$100 |
| e. | Restitution | \$31,599 |

I also understand that, because I am pleading guilty to more than one count, the Court may order the sentences on those counts to run consecutively.

2. I agree that I am guilty of the offense to which I will plead guilty, and I agree that the following facts are true:

a. At approximately 9:10 a.m. on June 9, 2004, I entered the Wells Fargo Bank located at 5191 Mowry Avenue, Fremont, California. While holding a cell phone and appearing to have a conversation, I handed a note to the bank teller which read, "This is a robbery. Give me all of your money. Don't try to press any buttons and don't give me any of those \$50s." I then twice told the teller, "Don't press any buttons," and "Give me all your money." The teller gave me U.S. currency. I then went over to another bank teller in this Wells Fargo Bank and presented the same note to her. This second teller gave me U.S. currency as well. These two tellers gave me a total of \$9647 in U.S. currency, which I placed in a backpack. I then left the bank. I stipulate and agree that the \$9647 that I took from Wells Fargo Bank on June 9, 2004 was insured by the Federal Deposit Insurance Corporation.

b. At approximately 9:45 a.m. on June 9, 2004, I entered the Citibank located at 1800 Decoto Road, Union City, California. I walked up to the bank teller and stated, "I hate to do this to you folks; this is a robbery." I then passed an envelope to the bank teller, the back of which read, "Give me your money." When the bank teller paused, I told the teller to "Give my your money." I then told another bank employee, "Don't even think about it lady, no pushing buttons or calling the police." The bank teller gave me \$4637 in U.S. currency. I placed the money in a white plastic bag and left the bank. I stipulate and agree that the \$4637 that I took from Citibank on June 9, 2004 was insured by the Federal Deposit Insurance Corporation.

c. At approximately 9:03 a.m. on June 19, 2004, I entered the Washington Mutual Bank located at 1870 Solano Avenue, Berkeley, California. I approached the bank teller and, while holding a cell phone and appearing to have a conversation, I told her, "Put it in the bag," I then took

1 out a black plastic bag from my jacket and told the teller, "This is a robbery." I then provided a note
2 to the teller which read, "This is a robbery and give me your money." While the teller was taking
3 out her money, I told the teller to "Hurry up. Just give me what you have." The teller placed \$1906
4 in U.S. currency into the bag. I took the bag and left the bank. I stipulate and agree that the \$1906
5 that I took from Washington Mutual Bank on June 19, 2004 was insured by the Federal Deposit
6 Insurance Corporation.

7 d. At approximately 10:30 a.m. on July 12, 2004, I entered the World Savings Bank
8 located at 3348 Lakeshore Avenue, Oakland, California. I unfolded a crumpled piece of paper,
9 handed it to the teller, and told her "Read the note." I then told the teller, "This is a robbery. Don't
10 take too much time, hurry up. I have people watching and don't give me any dye packs." The teller
11 gave me \$814 in U.S. currency, which I placed in a black plastic bag. I then left the bank. I stipulate
12 and agree that the \$814 that I took from World Savings Bank on July 12, 2004 was insured by the
13 Federal Deposit Insurance Corporation.

14 3. I agree to give up all rights that I would have if I chose to proceed to trial, including
15 the rights to a jury trial with the assistance of an attorney; to confront and cross-examine government
16 witnesses; to remain silent or testify; to move to suppress evidence or raise any other Fourth or Fifth
17 Amendment claims; to any further discovery from the government; and to pursue any affirmative
18 defenses and present evidence.

19 4. I agree to give up my right to appeal my conviction(s), the judgment, and orders of
20 the Court. I also agree to waive any right I may have to appeal any aspect of my sentence, including
21 any orders relating to forfeiture and/or restitution.

22 5. I understand that under 18 U.S.C. § 3600, I have the right, under certain
23 circumstances, to post-conviction DNA testing of evidence in the government's possession in
24 support of a claim that I am actually innocent of the offense(s) to which I am pleading guilty under
25 this plea agreement. I agree to waive my right to post-conviction DNA testing and my right to file
26 a petition under 18 U.S.C. § 3600 to compel that testing.

27 6. I agree not to file any collateral attack on my conviction(s) or sentence, including a
28 petition

1 under 28 U.S.C. § 2255, at any time in the future after I am sentenced, except for a claim that my
2 constitutional right to the effective assistance of counsel was violated.

3 7. I agree not to ask the Court to withdraw my guilty plea(s) at any time after it is (they
4 are) entered, unless the Court declines to accept the sentence agreed to by the parties. I agree that
5 the government may withdraw from this agreement if the Court does not accept the agreed upon
6 sentence set out below.

7 8. I agree that my sentence should be calculated pursuant to the Sentencing Guidelines.
8 I understand that the Court, while not bound to apply the Guidelines, must consult those Guidelines
9 and take them into account when sentencing. I also agree that the Sentencing Guidelines range will
10 be calculated as follows and that I will not ask for any other adjustment to or reduction in the offense
11 level or for a downward departure from the Guidelines range:

12	a.	Base Offense Level, U.S.S.G. § 2B3.1(a):		20
13	b.	A financial institution was robbed, U.S.S.G. § 2B3.1(b)(1):	add	2
14	c.	Grouping of the 4 counts of bank robbery, U.S.S.G. § 3D1.4:	add	4
15	d.	Acceptance of responsibility: (If I meet the requirements of U.S.S.G. § 3E1.1)	subtract	3
16				
17	e.	Adjusted offense level		23

18 9. I agree that a reasonable and appropriate disposition of this case is as follows: 63
19 months
20

21 imprisonment, 3 years of supervised release (with conditions to be fixed by the Court), a fine (if any)
22 to be determined by the Court, \$400 special assessment (\$100 as to each count), and \$31,599 in
23 restitution. In return for the government's promises set out herein: (a) I agree the amount of
24 restitution will not be limited to the loss attributable to the counts to which I am pleading guilty, and
25 (b) I further agree to pay restitution in the amount of \$31,599, which is the restitution amount for
26 losses caused by the following crimes and/or acts, namely: (1) the robbery of World Savings Bank,
27 located at 6450 Moraga Avenue, Oakland, California on June 19, 2004, where \$1437 was forcibly
28 taken from the bank, funds that at the time were insured by the Federal Deposit Insurance

1 Corporation; (2) the robbery of the Bank of the West located at 3396 Castro Valley Boulevard,
2 Castro Valley, California on June 24, 2004, where \$1567 was forcibly taken from the bank, funds
3 that at the time were insured by the Federal Deposit Insurance Corporation; (3) the robbery of the
4 California Savings Bank, located at 22268 Foothill Boulevard, Hayward, California on June 24,
5 2004, where \$200 was forcibly taken from the bank, funds that at the time were insured by the
6 Federal Deposit Insurance Corporation; (4) the robbery of the U.S. Bank, located at 3498 Mount
7 Diablo Boulevard, Lafayette, California on July 6, 2004, where \$854 was forcibly taken from the
8 banks, funds that at the time were insured by the Federal Deposit Insurance Corporation, and (5) the
9 robberies of the financial institutions as charged in counts One through Five the indictment in this
10 case, where collectively \$37,188 was forcibly taken (minus \$9,647 of which was recovered) from
11 the respective banks, funds that at the time were insured by the Federal Deposit Insurance
12 Corporation. I agree that I will make a good faith effort to pay any fine, forfeiture or restitution I am
13 ordered to pay. Before or after sentencing, I will, upon request of the Court, the government, or the
14 U.S. Probation Office, provide accurate and complete financial information, submit sworn statements
15 and give depositions under oath concerning my assets and my ability to pay, surrender assets I
16 obtained as a result of my crimes, and release funds and property under my control in order to pay
17 any fine, forfeiture, or restitution. I agree to pay the special assessment at the time of sentencing.

18 10. I agree not to commit or attempt to commit any crimes before sentence is imposed
19 or before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial release
20 (if any); intentionally provide false information to the Court, the Probation Office, Pretrial Services,
21 or the government; or fail to comply with any of the other promises I have made in this Agreement.
22 I agree that, if I fail to comply with any promises I have made in this Agreement, then the
23 government will be released from all of its promises in this agreement, including those set forth in
24 paragraphs 13 through 15 below, but I will not be released from my guilty plea(s).

25 11. I agree that this Agreement contains all of the promises and agreements between the
26 government and me, and I will not claim otherwise in the future.

27 12. I agree that this Agreement binds the U.S. Attorney's Office for the Northern District
28 of California only, and does not bind any other federal, state, or local agency.

1 The Government's Promises

2 13. The government agrees to move to dismiss any open charges pending against the
3 defendant in the captioned indictment at the time of sentencing.

4 14. The government agrees not to file or seek any additional charges against the defendant
5 that could be filed as a result of the investigation that led to the captioned indictment.

6 15. Assuming the defendant is a Criminal History Category III under the Sentencing
7 Guidelines, the government agrees that the appropriate sentence in this case should be as set forth
8 in paragraph 9 above, unless the defendant violates the agreement as set forth in paragraph 10 above
9 or fails to accept responsibility.

10 The Defendant's Affirmations

11 16. I confirm that I have had adequate time to discuss this case, the evidence, and this
12 Agreement with my attorney, and that he has provided me with all the legal advice that I requested.

13 17. I confirm that while I considered signing this Agreement, and at the time I signed it,
14 I was not under the influence of any alcohol, drug, or medicine.

15 18. I confirm that my decision to enter a guilty plea is made knowing the charges that
16 have been brought against me, any possible defenses, and the benefits and possible detriments of
17 proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no one
18 coerced or threatened me to enter into this agreement.

19
20 Dated: _____

21 _____
JOHN MARK FELDER
Defendant

22
23 KEVIN V. RYAN
United States Attorney

24
25 Dated: _____

26 _____
JAMES E. KELLER
Assistant United States Attorney

27
28 I have fully explained to my client all the rights that a criminal defendant has and all the

1 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement and
2 all the rights he is giving up by pleading guilty, and, based on the information now known to me, his
3 decision to plead guilty is knowing and voluntary.
4

5 Dated: _____

JOHN PAUL REICHMUTH
Attorney for Defendant

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28